IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.06.2007

CORM:

THE HON'BLE MR. JUSTICE P. JYOTHIMANI

Writ Petition Nos.18562 & 20471 of 2000

T. Arumugam .. Petitioner in WP.18562/00
R. Ayyasamy .. Petitioner in WP.20471/00

Vs.

1. The Deputy Chief Engineer
   OB Zone, B.1 Relay
   Shift Office Mines-I
   Neyveli. .. R.1 in W.P.No.18562/2000

1. The Chief Engineer
   Office of the General Manager
   Ground Water Control and
   Drills/Mines-I
   Neyveli Lignite Corporation
   Ltd., Neyveli 607 801. .. R.1 in W.P.No.20471/2000

2. The General Manager Mines-I
   Neyveli Lignite Corporation Ltd.,
   Neyveli 607 801.

3. The Enquiry Officer
   Deputy General Manager
   Personnel and Administration
   Department Corporation Office
   Block I, Neyveli Lignite
   Corporation Ltd., Neyveli 607 801.

4. The Appellate Authority
   Office of the General Manager
   OB Zone/Mines I
   Neyveli Lignite Corporation
   Neyveli 607 808. .. R.2 to R.4 in both Wps.

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Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the proceedings of the 1st respondent in No.18167/A5/GM/MI/99

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dated 19.08.2000 and the proceedings of the 4th respondent in No.18167/A5/GM/MI/99 dated 05.10.2000 and quash the same.

For petitioners : Mr. N. Maninarayanan
For respondents : Mr. N.A.K. Sharma

COMMON ORDER

The writ petitioner in W.P.No.18562 of 2000 was employed as a Senior Operator Grade-II in Neyveli Lignite Corporation Limited, viz., under the second respondent. Likewise, the writ petitioner in W.P.No.20471 of 2000 was employed as a Senior Technician Grade-II/Electrical under the second respondent.

2. In respect of an incident of theft which took place in the premises of the respondents Corporation, the first respondent has framed charges against the petitioners on 10.01.2000 in accordance with the Standing Orders governing the services of the petitioners. The charge which has been framed against the petitioners is that, they have committed theft of half-couplers and adopters. It is seen that as per the charges framed against the petitioners on 10.01.2000, they were called upon to submit their explanation. In spite of receiving the above said charge memo, the petitioners have not chosen to submit their explanation, and the respondents have decided to conduct enquiry by appointing Shri D. Richard Paul, the then Deputy General Manager of the Corporation as an enquiry Officer.

3. It is not in dispute that the petitioners have submitted themselves to the enquiry conducted by the Enquiry Officer, in which, common enquiry was conducted against both the petitioners. On behalf of the Corporation, 9 documents were marked and 4 witnesses were examined before the Enquiry Officer. The delinquent employees, viz., the petitioners, have examined themselves and also filed joint defence statement through their defence assistant engaged by them. After giving opportunity to the petitioners, the Enquiry Officer has submitted his report on 16.06.2000, finding that the charge sheeted employees are guilty of the charge of theft framed against them by the Corporation. It is seen from the enquiry report submitted by the Enquiry Officer that the entire evidence has been analysed and some of the items of materials against which the theft was complained, have been recovered from the petitioners and also it is, after analysing the entire facts, the Enquiry Officer submitted his report. Considering the Enquiry Officer's report, the first respondent, who is contemplated as disciplinary authority, has passed orders on 19.08.2000, removing the petitioners from service. Not satisfied with the orders of the first respondent, the petitioners have filed appeals to the 4th respondent, and the 4th respondent considering the original order of punishment and all other records, having found that the charges framed against the petitioners are serious in nature, and also referring to the representation submitted by the petitioner in

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W.P.No.18562 of 2000, has confirmed the order of the original authority by rejecting the appeals. It is, as against the orders of the original as well as appellate authorities, the petitioners have filed the present writ petitions.

4. The points raised in these writ petitions by the petitioners are that they have not involved in any theft, but both the authorities have concluded against the them based on the circumstantial evidence and in the absence of any proof produced on the side of the Management, and especially in the circumstances that criminal case is pending before the competent court, the decision arrived at by the disciplinary authority, as if the petitioners have committed theft is against the principles of law. It is also the case of the petitioners that they were not given proper opportunity and therefore, there is denial of principles of natural justice. Further, it is the case of the petitioners that the impugned proceedings are passed based on the extraneous considerations, like in-subordination, trade union activities, etc.,

5. I have heard the learned counsel for the petitioners as well as the respondents.

6. The first contention raised on behalf of the petitioners that no opportunity was given to them to defend the disciplinary proceedings has no basis. A reference to the enquiry report submitted by the Enquiry Officer shows that the petitioners were given proper opportunity and they have in fact participated in the enquiry and on the side of the management, 4 witnesses were examined apart from the documents nine in number, which were produced. In such circumstances, even after giving opportunity to the petitioners, if the petitioners failed to submit their explanation and having participated in the enquiry, it is not open to them now to turn round and to say that no opportunity was given to them.

7. In respect of next contention that the charge of theft has been imputed on the petitioners based on the circumstantial evidence also has no foundation for the reason that the disciplinary authority can only, based on the circumstantial evidence decide the charge, and the clear instance shown in the enquiry report that the materials have been recovered from the petitioners is sufficient for the enquiry officer to come to the conclusion that the petitioners have involved in the offence of commission of theft. For the purpose of completing the departmental proceedings mere pendency of criminal case is certainly not a bar. In view of the above said facts, I do not see any illegality in the impugned orders passed by the respondents.

8. The respondents have also raised an objection as preliminary objection about the maintainability of the writ petitions; accordingly, the learned counsel for the respondents in counter affidavit stated that in view of the fact that the petitioners are workmen within the meaning of Industrial Disputes Act and they have effective alternative remedy

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under the said Act to agitate their non-employment. It is made clear that dismissal of the writ petitions will not stand as a bar for the petitioners to agitate their rights available in law, if they are so advised.

In the light of what is stated above, the writ petitions fail and the same are dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Deputy Chief Engineer
   OB Zone, B.1 Relay
   Shift Office Mines-I, Neyveli.
2. The Chief Engineer
   Office of the General Manager
   Ground Water Control and
   Drills/Mines-I
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5. The Appellate Authority
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   Neyveli Lignite Corporation
   Neyveli 607 808.

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1 cc To Mr.N.Mani Narayanan, Advocate, SR.33421.
2 cc To Mr.NAK.Sarma, Advocate, SR.33307 & 33863.

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PPV(CO)
RVL 18.06.2007

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